U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 15 2015 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions with the defined equivalent of an advanced degree. The petitioner seeks employment as an elementary special education teacher for in Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that she qualifies for classification as a member of the professions with the equivalent of an advanced degree. The director made no finding regarding the application for a national interest waiver of the job offer requirement.

On appeal, the petitioner submits a brief.

I. Law

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines a "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." Section 101(a)(32) of the Act defines elementary school teaching as a profession.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) requires that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A U.S. Justice Department notice includes the following discussion of the progressive experience requirement:

> "Progressive experience" is not defined by statute or regulation. Its plain meaning within the context of EB–2 adjudications is relatively simple: employment experience that reveals progress, moves forward, and advances toward increasingly complex or responsible duties. In short, progressive experience is demonstrated by advancing levels of responsibility and knowledge in the specialty.

Opportunity to File Untimely Motions to Reconsider Decisions Denying EB-2 Immigrant Visa Petitions, 65 Fed. Reg. 41093, 41096 (July 3, 2000).

II. Facts and Analysis

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 22, 2013. An accompanying statement indicated that the petitioner has an "equivalent Master's degree and about (9) years of dedicated and progressive teaching experience in both the United States and the Philippines."

The petitioner does not claim to hold an advanced degree. The record shows that the petitioner received a bachelor's degree from in March 2006. A credential evaluation indicates that the degree is equivalent to a bachelor's degree from a regionally accredited U.S. institution. The petitioner stated she has undertaken online studies for a master's degree from but she did not claim to have completed those studies or to have earned that degree. Because the petitioner does not hold an actual advanced degree, she must submit the required evidence of her past employment, and establish that it was progressive in nature.

On her résumé, the petitioner stated that she had worked as a "shadow teacher" at from June 2004 to September 2007 – a period that mostly fell during the petitioner's undergraduate study. The petitioner did not receive her teaching certificate until 2006, which indicates that the duties of a shadow teacher do not require the credentials of a certified teacher. The petitioner submitted no documentation regarding her time as a shadow teacher, as indicated on her résumé. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner asserts that she began working as a special education teacher at in November 2007. The submitted letters from officials of part of the system, indicating that the petitioner had taught at the school "for the last 5 ½ years" are consistent with that date. The letters do not indicate that the petitioner's experience as a special education teacher was progressive.

In a request for evidence (RFE) issued on November 20, 2013, the director stated that the petitioner had not established that she holds an advanced degree or its defined equivalent. The director specified that, in the absence of an advanced degree, the petitioner must submit "letters from current or former employer(s) showing that [she] has at least five years of progressive post-baccalaureate experience in the specialty." The director also requested further evidence of eligibility for the national interest waiver of the statutory job offer requirement.

The petitioner's response included a 26-page brief devoted entirely to the issue of the national interest waiver. The brief did not address the issue of progressive post-baccalaureate experience. The brief occasionally referenced the petitioner's possession of an "equivalent Master's degree," but there is no subsequent elaboration on the point.

The petitioner submitted a new credential evaluation, showing that she had earned "33 semester credit hours . . . towards a Master of Arts in Special Education." The evaluation included the notation: "Program not completed, thus no degree has been conferred." The remainder of the evidence submitted in response to the RFE related to the national interest waiver application.

The director denied the petition on July 7, 2014, stating that the petitioner "does possess a baccalaureate degree or its foreign equivalent but the evidence does not show that the [petitioner] has the progressive qualifying experience to show equivalence to an advanced degree." The director added: "Counsel's assertions that the beneficiary possessed an advanced degree are unfounded on record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)." The director stated that the submitted employer letters are deficient because they "do not show that the [petitioner's] duties became progressively more complex and advanced," and because they lack sufficient detail about the dates of employment and the petitioner's duties.

The director's decision did not include any finding regarding the national interest waiver application. The director explained that, because the petitioner had not established eligibility for the underlying immigrant classification, a determination on the waiver application "would be moot."

On appeal, the petitioner submits a 32-page brief which does not address the stated grounds for denial except for the claims in the introductory "Statement of Facts" section that the petitioner holds an "equivalent Master's Degree and about nine (9) years of dedicated and progressive teaching experience," and therefore "qualifies as a Member of the Professions Holding an Advanced Degree." Citing *Matter of Obaigbena*, 19 I&N Dec. at 534 and *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506, the director had previously noted that counsel's assertions are not, themselves, evidence that can meet

the petitioner's burden of proof. The remainder of the brief concerns the petitioner's application for a national interest waiver. Because the director made no initial finding regarding the waiver, this discussion is not relevant to the stated grounds for denial.

The appellate brief neglects the stated ground for denial, and instead discusses, at length, a finding that the director did not make. When an appellant fails to offer an argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal to the AAO).

III. Conclusion

As cited previously, the relevant law and regulations indicate that application for a national interest waiver may only be made by a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. The petitioner did not claim or submit evidence to establish that she is an individual of exceptional ability, instead indicating that she holds the equivalent of an advanced degree. Because the petitioner has not earned an advanced degree, she cannot qualify for the classification she seeks unless she documents at least five years of progressive post-baccalaureate experience. The petitioner's initial submission lacked the necessary evidence, and the director issued an RFE to afford her the opportunity to fill this gap in the record. The petitioner's response to the RFE did not address this issue, and neither does the brief that the petitioner has submitted on appeal.

The director concluded that the petitioner had not demonstrated that her post-baccalaureate experience was progressive. The petitioner, on appeal, does not address this finding or show that the finding was in error. We will therefore dismiss the appeal.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.